# UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

T	41	Matter	C
ın	The	Matter	OT.
TII	u	IVIUIUL	$\omega_{1}$

SECUPRINT INC.,

Employer,

and

Case No. 3-RC-12019

GRAPHIC COMMUNICATIONS CONFERENCE/ INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 503-M,

Petitioner.

EMPLOYER'S BRIEF IN RESPONSE TO AMICUS BRIEF FILED ON BEHALF OF GRAPHIC COMMUNICATIONS CONFERENCE/INTERNATIONAL BROTHERHOOD OF TEAMSTERS

NIXON PEABODY LLP

Attorneys for Employer
Secuprint Inc.
1300 Clinton Square
Rochester, New York 14604-1792

Todd R. Shinaman, Esq. of Counsel

### **PRELIMINARY STATEMENT**

This brief is submitted on behalf of employer Secuprint Inc. ("Secuprint" or "Employer") in response to the Amicus Brief submitted by the Graphic Communication Conference of the International Brotherhood of Teamsters ("GCC/IBT" or "Union") on February 23, 2012. For the reasons stated in Secuprint's Brief on Review, the smallest appropriate unit in this case includes the press employees, and the Acting Regional Director's Decision and Direction of Election dated May 20, 2011 ("Decision") should be reversed. The Amicus Brief misapplies Board precedent, mischaracterizes Secuprint's arguments in this case, and misstates the facts established at the hearing.

#### **ARGUMENT**

#### POINT I

## The Amicus Brief Fails to Properly Apply Board Precedent in the Printing Industry

The Union's reliance on AGI Klearfold LLC, 350 NLRB 538 (2007) to support its position that the press employees should be excluded from the unit is misplaced. In AGI Klearfold the Board specifically stated that in analyzing units in the printing industry, it would "accord appropriate weight to the longstanding precedent that the 'traditional lithographic' unit in the printing industry is a combined unit of press and pre-press employees." Simply put, excluding the press employees from the unit in the present case does not adequately accord weight to that precedent. To exclude the press employees here would leave a residual unit that is not in accord with the traditional lithographic unit, as it would separate the press employees from the pre-press employees. This residual unit of press employees is precisely the unit found inappropriate in AGI Klearfold. The Employer does not contend, as the Union suggests, that the precedent requires that press and pre-press employees be in the same unit, but the Union's

apparent position that no weight should be accorded the Board's precedent on lithographic units is clearly erroneous. The Employer simply asserts that when such weight is properly accorded, along with an analysis of the overwhelming community of interest between the press employees and other hourly production employees, the Board will determine that the smallest appropriate unit includes the press employees.

Although AGI Klearfold excluded production and maintenance employees from a requested unit of press employees, here, the **union** chose what is essentially a wall-to-wall unit, except that it excluded the press employees. The Union would have the Board approve a unit that contains employees at both ends of a continuous and interrelated production process, but not those in the middle. The fact that the petitioner wanted to include other employees with press employees does not diminish the weight that should be accorded the Board's prior rulings favoring units that combine press and pre-press employees.

## **POINT II**

## The Union Mischaracterizes the Facts Established at the Hearing in This Matter

The Amicus Brief makes several significant mischaracterizations of the record in this matter. For example, it states that "there is no evidence of the contact between the press department employees and the other employees at the Employer's facility, let alone that the press and pre-press department employees regularly come into each other's work areas as in *AGI Klearfold*." (Amicus Brief, p. 7). This statement is quite simply belied by the undisputed hearing testimony. As stated in the Employer's Brief on Review, employees from all different departments, including press employees, constantly interact in order to discuss issues that arise at various stages of the production process. For example, Jason Colline testified that press employees talk to pre-press employees when something on the printing plate does not look quite

right, and also that press employees talk to bindery employees if an issue arises with the layout of the product. (TR 21-22). Interactions such as these take place on a daily basis. (TR 22). Moreover, union witness Jessie McFadden testified that the responsibilities of shipping employees include delivering materials and/or products to the different departments within the Secuprint plant, including the press department. (TR 186-187). As such, in carrying out their job duties, shipping employees frequently come into contact with employees from pre-press, press and bindery.

The Union also erroneously contends that "there is no functional integration between the employees in the petitioned-for unit and the pressmen because only the pressmen operate the presses." (Amicus Brief, p. 25). This contention conveniently ignores the fact that the record established without dispute that pressmen work on the bindery equipment, which is located within a few feet of the press. (TR 25-26, 107). The union's own witness and a photograph confirmed this functional interchange. (Employer Exh. 4; TR 154-155, 171).

In addition, the Amicus Brief erroneously states that "when work is slow, press department employees are permitted to stay at work while other employees may be sent home." (Amicus Brief, p. 7). The union's own witness testified at the hearing, when asked whether press employees were sent home, that "[a] few of the feeder tenders may go home but the head pressman never go home." (TR 168). The feeder tenders, or "press helpers," are also press employees whom the union has excluded from the unit and are treated no differently in this regard than other hourly employees.

13877118.1

As set forth in the employer's Brief on Review, when the accurate facts, most of which are ignored in the Amicus Brief, are applied using the relevant standard, it is clear that the smallest appropriate unit includes all hourly production employees.

#### POINT III

# The Employer Has Satisfied the Standard Set Forth in Specialty Healthcare

Application of the standard articulated by the Board's in *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83 (2011), requires that the Acting Regional Director's determination be overturned. Assuming that the Board elects to apply that standard in this case, the facts establish that the Press employees share an overwhelming community of interest with the Employer's other hourly production employees. To exclude them would result in an improper fractured unit.

The Board's decision in *Odwalla, Inc.*, 357 NLRB No. 132, applying the rule in *Specialty Healthcare*, is particularly instructive. Odwalla produces and sells juice and fruit bars. A union election took place at an Odwalla facility made up of a distribution center and an equipment refurbishment center. During the election, the union challenged a merchandiser's ballot. The Regional Director ordered that a hearing be held, and the hearing officer sustained the ballot challenge on grounds that merchandisers did not share a sufficient community of interest with other members of the unit.

When applying *Specialty Healthcare*, the Board analyzed whether the petitioned-for unit was the appropriate bargaining unit based on community of interest factors, and whether the employer successfully carried the burden of establishing an overwhelming community of interest with the unit employees. The Board found that if the unit excluded merchandisers, it would be a

13877118.1

"fractured" unit, meaning the union was seeking recognition of "an arbitrary segment" of the appropriate unit. Additionally, none of the traditional community-of-interest factors showed that merchandisers did not share in the community of interest. The composition of the unit excluding merchandisers did not follow any "lines drawn by the Employer" – the proposed unit consisted of employees with different classifications and from various departments. Employees in the unit had different functions, supervisors, and compensation. Therefore, "several of the factors that distinguish the RSRs [route service representatives] from the merchandisers likewise distinguish the RSRs from all or most of the other employees included in the recommended unit." Id.

The Board concluded that the employer had established an overwhelming community of interest "because none of the traditional bases for drawing unit boundaries used by the Board supports excluding merchandisers while including all the remaining employees." <u>Id</u>. Therefore, merchandisers had to be included in the unit, and the challenged merchandiser ballot had to be counted.

The reasoning in *Odwalla* is directly applicable here. The union has petitioned for an arbitrary unit consisting of all production employees, including those in pre-press right through the end of the production process, but excluding the press employees, who are right in the middle, both physically and operationally. The union has not followed the traditional lithographic unit, nor has it proffered any adequate reason for insisting on a plant-wide unit while excluding one group of employees working on a particular machine. As noted with regard to the requested unit in *Odwalla*, the petitioned for unit here includes additional employees who have more in common with the press employees than with others in the unit. For example, the pre-press employees have significantly more contact and functional integration with the press

13877118.1

employees than with those in shipping. Given the overwhelming similarities between the press

employees and those in the requested unit, as set forth in the employer's Brief on Review, there

is simply no basis for excluding them. 1

Conclusion

The arguments made in the Amicus Brief cannot overcome the undeniable facts

established at the hearing which show an overwhelming community of interest between press

employees and those in the petitioned for unit. When appropriate weight is accorded the

traditional lithographic unit and all of the facts are considered, it is clear that the exclusion of the

press employees would create a fractured unit with no adequate basis. Therefore, the Acting

Regional Director's determination should be reversed.

Dated: April 25, 2012

NIXON PEABODY LLP

Attorneys for Employer

Secuprint Inc.

/s/ Todd R. Shinaman

TODD R. SHINAMAN

1300 Clinton Square Rochester, NY 14604

Telephone: (585) 263-1265

The Board's decision holding that an employer did not establish an overwhelming community of interest in DTG Operations, Inc., 357 NLRB No. 175 (2011), is readily distinguishable, as the employees in question were physically separated when working and had specific work experience requirements, neither of which is present here.

13877118.1

-6-